

<b>EXAM 1 – SESSION DECEMBER 2020 – Question 1 (20%)</b>	<b>Points</b>
<b>EXAM 1 – SESSION DECEMBER 2020 – Question 2 (35%)</b>	<b>Points</b>
<p>Mr. Greedy is the CEO of the company. He owes specific fiduciary duties to the company, in particular a duty to act in good faith, and a duty of loyalty to the company and its stockholders.</p>	2
<p>This answer should refer to the facts explaining how he breached the fiduciary duties.</p>	1
<p>Eight EYES LLP and JOKER SMILE LLP are both gatekeepers. They both have a duty of care when acting as gatekeepers.</p>	2
<p>Gatekeepers are the agents of the company, which is their principal.</p>	2
<p>Aggressive practices on the side of CEOs (as in the case of Enron, paying millionaire fees to their auditors) could limit the role and the neutrality of gatekeepers, acting as if they were the CEO's agents instead of the company's agents.</p>	2
<p>Consistent with the previous question, this answer should refer to the facts explaining how they breached the fiduciary duties.</p>	1
<p>This answer should refer to shareholderism and stakeholderism, highlighting their differences.</p>	2
<p>Furthermore, it should explain the differences between short-term and long-term and how these concepts are (sometimes falsely) related to</p>	2

shareholderism and stakeholderism, emphasizing the possibility that long-term value does not necessarily imply a stakeholder value oriented approach, as well as short term value does not necessarily imply a shareholder value oriented strategy.	2
A broader interpretation of stakeholderism would also include a reference to sustainability and its characteristics.	2
Better definition of what is sustainability, especially in the context of ESG Incentives for changing the business model and opting for more sustainable activities.	Extra credit 2 Extra credit 2
Mr. Sequoia could implement different actions, including but not limited to:	
- Opening the board to a representative chosen among its employees	1
- Opting for changing the business model of the company by making different choices more oriented towards a sustainable approach.	2
- A rather extreme decision could also be the one of proposing a delisting of the company, not to be subject to the pressure resulting from quarterly disclosure.	Extra credit 2
There might be multiple legal obstacles. Example: Some shareholders could accuse Mr. Sequoia of breaching his fiduciary duties, by not acting in the interest of the company. They could challenge specific initiatives, because they would not necessarily be related to increasing the value of their stocks.	
This answer could briefly draw on the role of activist funds in corporate governance and their strategies.	1
The fund assumes that substituting a director with a robot, and creating a DLT infrastructure will ultimately increase the value of the company. AI and DLT technologies permeate corporate governance in different ways because of their different structural characteristics.	2
The answer should briefly address these characteristics.	
PROs and CONs (examples, not exhaustive list)	1
With regard to a robot:	
PROs: ability to process data on a real time basis and potentially be in the position to make better choices than a human director.	2
CONs: a general problem of accountability	1
With regard to DLT:	
PROs: enhanced transparency at the level of reporting, and shareholder voting, and possibility to rethink the role of gatekeepers.	1
CONs: fragility of the system, potential external attacks.	1
<b>EXAM 1 – SESSION DECEMBER 2020 – Question 3 (25%)</b>	<b>Points</b>

The question is not intended to be jurisdiction specific. It is designed to apply different provisions (especially in EU and Swiss law) that were discussed in class.	1
Main issues: Mandatory bid offer (S for A)?	1
Liability for data protection breaches?	1
Success chances of merger?	1 EC
A's options to "squeeze out" B's remaining shareholders?	1
Competition law assessment of concentration?	2
S acquires "control" in the sense of Art. 5 EU Takeover Directive – in conjunction with member states' laws which typically set a 30 % threshold – and Swiss Art. 135 FinMIA (33 1/3 % threshold).	1
Which EU member states' law would be applicable? Art. 4 EU Takeover Directive	1
But: Mandatory bid provisions are only applicable if A's shares are stock market listed.	2
Increase in share capital (subscription right, equal treatment of shareholders) – cancellation of subscription right by general assembly for the takeover as "good cause" (Art. 72 Company Law Directive 2017/1132/EU, Art. 652b CO)	1
No indications for opting-up/opting-out	2
Mandatory bid exemption since „acquisition for reorganisational purposes“? Such provisions are typically directed at reorganisation of A (rather than B); could potentially be backed by ratio legis (however: subsequent merger intentions did not yet exist when S acquired control).	1
No mandatory rule in U.S. Federal law, only few states have it (namely not Delaware)	2
Material applicability of GDPR since customer information is "personal data" (Art. 4 I GDPR), which is processed (unlawfully, Art. 4 II and XII GDPR)	1 EC
Wide extraterritorial application due to market place principle (Art. 3 II GDPR) – applicability highly likely even if B is not established in the EEA, Art. 3 I GDPR); applicability in time questionable since data breaches happened "a couple of years" ago	2
Notification to the Supervisory Authority (Art. 33 GDPR),	1

Communication to data subjects (Art. 34 GDPR)	1
Basic principle to be considered: Art. 5 I lit. f GDPR (ensuring appropriate security)	1
Accountability of controller (i.e. B): Art. 5 II GDPR	1
Failure to implement appropriate technical and organisational measures to ensure information security (Art. 32 GDPR)	2
Financial situation is not a justification for inappropriate measures.	1 EC
Fine (Art. 83 GDPR); cf. ICO British Airways, Marriott	1 EC
Short discussion on admissibility of inverse mergers/ethics of tax evasion	1
A doesn't dispose of the qualified majority of two thirds of the votes (Art. 93 I Company Law Directive 2017/1132/EU; Art. 18 I lit. a MerA) – remaining shareholders could prevent the merger by voting against	2
Variant: Can A exercise a squeeze-out right according to Art. 15 II Takeover Directive	1
– in conjunction with member states' laws that don't set a higher threshold – ?	1
No: Delay of three months (Art. 15 IV Takeover Directive) since acquisition elapsed	1
But: Possibility of cash out-merger (Art. 18 V in conjunction with Art. 8 II MerA)	1
Competition law assessment of concentration: Competition authority authorization of take over, not (anymore) of subsequent merger	1
- if takeover criteria are fulfilled -.	1
Applicable laws: EU Council Merger Regulation No 139/2004, Hart-Scott-Rodino Antitrust Improvements Act (Sect. 7 Clayton Act), Art. 32 ff. Cartel Act (no details)	1 EC
<b>EXAM 1 – SESSION DECEMBER 2020 – Question 4 (20%)</b>	<b>Points</b>
Disclosure requirements are important for companies so that they can comply with capital market and/or exchange regulations regarding the required level and type of information to be disclosed to investors who may purchase securities from issuers which trade in public or retail markets.	1

<p>It is assumed that the information disclosed affects the price of the companys securities (both debt and equity issuance)</p>	<p>1</p>
<p>Disclosure requirements are intended to provide information to investors that will in turn affect the cost of a companys capital / the price at which a company can sell its securities</p>	<p>2</p>
<p>Disclosure of information should affect the price of a companys liabilities (debt and equity and hybrid instruments). The price of its liabilities informs the company regarding what mix of equity and debt that it chooses to finance its operations.</p>	<p>2</p>
<p>Famas Market Efficiency Hypothesis</p>	<p>2</p>
<p>An <b>efficient capital market</b> is one in which the <u>current price of a security</u> fully,</p>	<p>2</p>
<p>quickly, and rationally <u>reflects all available information</u> about that security. The more efficient a market is, the quicker its reaction will be to new information.</p>	<p>2</p>
<p>Investment analysis may be conducted by way of <u>technical analysis</u> (analyzing historic prices; e.g. charts) or by way of <u>fundamental analysis</u> (e.g. analyzing financial figures of a company; e.g. balance sheet)</p>	<p>2</p>
<ul style="list-style-type: none"> <li>• <b>Strong-form EMH</b> states that security prices fully reflect <u>all information from both public and private sources</u>. This means that no group of investors has exclusive access to information relevant for the formation of prices, and <u>none should be able to consistently achieve positive abnormal returns</u>.</li> </ul>	<p>2</p>
<ul style="list-style-type: none"> <li>• <b>Semi-strong EMH</b> states that current security prices fully reflect <u>all public available information</u>. The implication is that an investor <u>cannot achieve positive risk-adjusted returns on average by using fundamental analysis based on public information</u>.</li> </ul>	<p>2</p>
<ul style="list-style-type: none"> <li>• <b>Weak-form EMH</b> states that the past price and volume (market) information will <u>2</u> have no predictive power about the future direction of security prices. (<u>No positive risk-adjusted returns on average by using technical analysis</u>)</li> </ul>	<p>2</p>
<ul style="list-style-type: none"> <li>• <b>Regulatory requirements in the Prospectus laws to prevent market abuse and insider dealing are based on the notion that the price of securities in capital markets are not based on a strong form of market efficiency</b> (e.g. this theory says prices include private information)</li> </ul>	<p>2</p>
<ul style="list-style-type: none"> <li>• Fundamental analysis</li> </ul>	<p>2</p>
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>• Research has shown that in relation to <u>fundamental analysis</u> markets are generally <u>semi-strong efficient for developed markets</u></li> </ul> </li> </ul>	<p>2</p>

<p>Note that fundamental analysis results in efficient market prices. Skilled investors may <u>act rapidly</u> before <u>new information</u> is reflected in the price</p>	
<ul style="list-style-type: none"> <li>• There is evidence of <u>semi-strong form inefficiency</u> in some <u>emerging markets</u></li> </ul>	1
<p>Technical analysis</p>	1 - 3 EC
<ul style="list-style-type: none"> <li>• Generally, the evidence indicates that <u>technical analysis</u> does <u>not produce abnormal profits</u></li> <li>• However, some research has shown that <u>technical analysis</u> may <u>work</u> in <u>emerging markets</u>. Note: Given the large amount of trading strategies, not all can be tested.             <ul style="list-style-type: none"> <li>• Costs such as <u>trading costs</u> should, however, also be <u>considered</u>. So, that a trade may be positive pre-costs, but negative post-costs</li> </ul> </li> </ul>	